

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 9-24-2003 Item: 4.e.

File Number
SF 03-006

Application Type
Appeal of the Director's Decision to Approve a Single-Family House Permit

Council District
2

Planning Area
Edenvale

Assessor's Parcel Number(s)
704-44-001

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Alison Hicks

Location: 7025 Bolado Drive

Gross Acreage: 0.159

Net Acreage: 0.159

Net Density: n/a

Existing Zoning: R-1-8 Residence

Existing Use: Single-family detached residence

Proposed Zoning: No Change

Proposed Use: No Change

GENERAL PLAN

Completed by: AH

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8.0 DU/AC)

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AH

North: Single-family Detached Residential

R-1-8 Residence

East: Multi-family Residential

R-1-5 (PD) Residential Planned Development

South: Single-family Detached Residential

R-1-8 Residence

West: Single-family Detached Residential

R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: AH

☐ Environmental Impact Report
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AH

Annexation Title: Oak Grove No. 25

Date: 7/17/1968

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

OWNERS

Jaime and Maria Guerrero
7025 Bolado Drive
San José, California 95119

APPELLANT

Mr. Michael Crosier
225 Bernal Road
San José, California 95119

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: AH

Department of Public Works

None Received

Other Departments and Agencies

None Received

GENERAL CORRESPONDENCE

Appeal letter from Michael D. Crosier, neighbor at 225 Bernal Road, dated August 4, 2003.

E-mail between Mike Crosier and Alison Hicks, dated July, 18, 2003.

Petition Against Single-Family House Permit, received July 16, 2003.

E-mail from Mike Crosier, dated July 14, 2003.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is the appeal of a Single-Family House Permit to allow partial demolition and a 2,740 square-foot first and second story addition to an existing 1,442 square-foot, single-family house on a 0.159 gross acre lot in the R-1-8 Residence Zoning District resulting in a 4,182 house with a Floor Area Ratio of 0.60 and a height of 25 feet. Pursuant to Section 20.100.1030 of Title 20 of the Municipal Code, a Single-Family House Permit is required for additions to single-family residences if the resulting Floor Area Ratio (F.A.R.) is greater than 0.45. The F.A.R. of the proposed house is 0.60.

The Director of Planning approved the Single-Family House Permit following a Public Hearing before the Deputy Director of Planning. A Notice of Appeal (see attached) was filed by Mike Crosier, a neighbor whose residence is located immediately adjacent to the southwesterly boundary of the project site.

The subject site is located at 7025 Bolado Drive and is developed with a one-story, single-family detached residence. Single-family detached residences surround the property on the north, south and west. Two-story multi-family uses are located to the east. The project site is located on a block of predominately small-scale single-family detached ranch style residences that were built in the 1970s.

PUBLIC OUTREACH

Notices of the Planning Director's and Planning Commission hearings were distributed to the owners and occupants of all properties located within 300 feet of the project site. Staff has been available to discuss the project with interested members of the public.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The existing single-family residential use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8.0 DU/AC).

ANALYSIS

The Appeal objects to the approval of the Single-Family House Permit based on the following concerns 1) that the proposal does not conform to the *Single Family Design Guidelines* in terms of its scale, massing, and preservation of privacy and sunlight; 2) that the application is not complete because requested photos were not submitted; 3) that there have been no changes to the proposal based on neighborhood input or the appellant's meeting with the applicant; 4) that the proposed house is out of scale with the neighborhood in that the square footage is much greater than existing houses in the neighborhood; and 5) that the applicants have not properly maintained the project site. Following is a response to each of these issues.

1. Conformance with the Single-Family Design Guidelines

The Single-Family Design Guidelines (SFDG) provide both "suggestions" for homeowners and builders on how to deal with such issues as noise, shade, privacy and aesthetics and "guidelines" intended to be used in the review of Single-Family House Permits to ensure that new or expanded residences are compatible with the surrounding neighborhood. The SFDG suggestions and guidelines are addressed below:

Suggestions

Section III of the SFDG deals with the relationship of new or expanded single-family houses to adjacent properties. While this section provides guidelines in regard to lighting and balcony setbacks, most of its recommendations fall into the category of suggestions. The Section introduction clearly states that the "suggestions" are just that and are not intended to be used in the review of Single-Family House Permits. Although it is staff's practice to ask applicants to consider the suggestions of Section III, they are not used in assessing conformance with the Guidelines or in determining compatibility with the surrounding neighborhood.

Guidelines

The appellant has indicated that the proposed single-family residence does not conform to two sections of the SFDG that clearly provide guidance applicable to the review of Single-Family House Permits. These sections include *Building Design* beginning on page 13 and *Building Form*, beginning on page 21. Both of these sections indicate that the size and massing of new houses and additions should be compatible with the general scale and massing of the surrounding neighborhood. The section on Building Design identifies a menu of techniques that are intended to be used to achieve compatibility by minimizing the perceived scale of two-story houses in a setting where the predominant block pattern is single story. These techniques include the following:

- ? Limiting the profile of the new house to an area generally consistent with the profiles of adjacent houses;
- ? Significantly increasing the front and/or side setbacks for the entire structure;
- ? Setting the second story back from the front and sides of the first story a distance sufficient to reduce the apparent overall scale of the building;
- ? Significantly limiting the size of the second story relative to the first story;

- ? Placing at least 60 or 70 percent of the second story floor area over the back half of the first story; and
- ? Applying the above measures to each side of the house separately.

The proposed house design employs some, but not all of these suggested techniques. The proximate residences (except for the two story residences across Bernal Road) are relatively low-profile, single-story structures; consequently, it is not possible in this case to limit the profile of the proposed two-story residence to be consistent with that of the adjacent single-story residences. The proposal includes side and rear setbacks for the entire structure that only slightly exceed the Zoning Code minimum requirements. As proposed, the second story of the residence is set back significantly from the first story at the front (between 8 and 19 feet) and at the corner side (between 5 and 25 feet). These setbacks limit the size of the second floor to approximately 79 percent of the area of the ground floor, which somewhat exceeds the recommended 60 to 70 percent. Approximately 65 percent of the second floor is located over the rear 50 percent of the first floor area in conformance with the recommendations of the SFDG. In light of the neighborhood concern expressed in the appeal, staff recommends that the second floor be set back from the first floor a minimum of five feet for the elevation adjacent to the interior side property line of the subject site. This will serve to break up the wall along the interior side property line and reduce the size of the second floor relative to the first to approximately 71%.

2. Completeness of the Application

The appellant has indicated that the application is not complete because a photo requested in staff's original comment letter was not submitted. This photo of the existing house has been submitted and staff is confident that the application is complete and that the information needed to evaluate this proposal is available to staff, the Commission and the public.

3. Lack of Changes to the Project as Result of Neighborhood Input

The appellant has expressed concern that the proposed house was not modified in response to neighborhood concerns. The original Director's Hearing was deferred in response to neighborhood concern and to allow the applicants, the architect and the appellant to meet to discuss the design. Such a meeting did occur at which the applicant offered to plant mature trees in the back yard to screen the proposed house. The appellant, whose side yard abuts the rear yard of the subject house, indicated appreciation for the tree offer, but requested additional changes regarding scale and massing. The primary concern expressed by the appellant was the massing of the proposed residence as viewed from the rear of the site. The SFDG direct that the second-story massing should be focused at the rear of the house and includes no recommendation in regard to setting the second floor back from the first floor at the rear. In that the appellant's requested modifications were not supported by the Guidelines, staff did not require design revisions in the approved permit. Based on continued neighborhood concern regarding massing, staff has included a revised plan condition in the draft permit conditions requiring that the second story be set back a minimum of 5 feet from the first story on the interior side.

4. Square Footage of the Propose House Relative to that of Surrounding Residences

The SFDG do not limit the size of proposed residences, but rather, provide guidance as to how two-story residences in single-story neighborhoods can be designed to reduce the perceived scale of the residence, primarily as viewed from the public street. The Guidelines focus is on setting back the

second story from the first at the front and sides of the house and pushing the second story massing to the rear of the house. This approach recognizes the importance of the view from the public street and the greater sensitivity of the interior sides, where minimum setbacks are five feet. Despite the fact that this house is significantly larger than surrounding residences, staff has concluded, based on the analysis provided above, that the proposal conforms to the recommendations of the Guidelines in regard to scale and massing.

5. Maintenance of the Project Site

The appeal indicates that the site has been poorly maintained over the past 10 years. As staff has explained to the appellant, the subject of this Permit is the appropriate design of the proposed expansion to the subject single-family residence. The Permit process is not the appropriate forum for addressing concern regarding property maintenance. Staff has directed the applicant to the Code Enforcement process as the appropriate avenue to express concern regarding maintenance or blight.

Conclusion

The applicant, staff and the appellants have spent a significant amount of time in discussion regarding the appropriate design of the proposed residence. After careful consideration of neighborhood input and the applicant's revision of the project, staff determined that the proposal was in substantial conformance with the Single-Family Design Guidelines, and the Director of Planning approved the Permit. Based on continued concern from the neighborhood regarding the project massing, staff is recommending an additional condition requiring that the plans be revised to further reduce the massing of the second floor of the proposed residence by setting back the second floor from the first floor a minimum of 5 feet adjacent to the interior side property line of the subject site.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director's decision to approve the requested Single-Family House Permit, and include the following facts, findings and conditions in its Resolution.

1. The project site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted *San José 2020 General Plan Land Use/Transportation Diagram*.
2. The project site at 7025 Bolado Drive is located in the R-1-8 Residence Zoning District.
3. The subject site is 0.159 gross acres in size.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. The project is a single-family house with a Floor Area Ratio (FAR) of 0.60 as defined in the San José Municipal Code 20.100.1020.
6. A Single-Family House Permit is required, in accordance with Section 20.100.1030(B) of the San

José Municipal Code, because the FAR is greater than .45.

7. The new construction is 30 feet or less in height (25 feet).
8. The new construction is two stories or less.
9. The existing single-family house is not a City Landmark, is not listed on the Historic Resources Inventory, and is not located in a Historic District or Conservation Area.
10. The roofline, materials, trim and decoration details of the new construction are the same as that on the existing house.
11. The adjacent residences are relatively low-profile, single-story structures; consequently, it is not possible to limit the profile of the proposed two-story residence to be consistent with that of the adjacent residences.
12. The proposal includes side and rear setbacks for the entire structure that exceed the Zoning Code minimum requirements.
13. As proposed, the second story of the residence is set back significantly from the first story at the front (between approximately 8 and 19 feet) and at the corner side (between approximately 5 and 25 feet). The Permit includes a revised plan condition requiring that the second floor be set back from the first floor a minimum of five feet on the interior (northwesterly) side. This will serve to break up the wall along the interior side property line and reduce the size of the second floor relative to the first to approximately 71%.
14. Approximately 65 percent of the second floor is located over the rear 50 percent of the first floor area.
15. The scale, form and character of the proposed project are compatible with the surrounding neighborhood.
16. The proposed project conforms to the setback requirements of the R-1-8 Residence District.
17. The proposed project will meet all of the development regulations set forth in the Zoning Code.

The Director concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the *General Plan/Transportation Land Use Diagram* designation of Medium Low Density Residential (8 DU/AC).
2. The project complies with the applicable provisions of the *Zoning Ordinance*, Title 20 of the Municipal Code.
3. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
4. The proposed project is in substantial conformance with the *Single-Family Design Guidelines*.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director

finds that:

1. The interrelationship between the orientation, location and elevations of the proposed building(s) and structure(s) and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. The architectural elements of the proposed and/or existing structure(s) are comparable in terms of mass, scale and height.
2. The orientation, location and elevations of the proposed building(s) and structure(s) and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. The exterior walls and roof materials of the proposed structure(s) on site match or are compatible with the materials of existing adjacent or nearby structures.
 - b. The structure(s) proposed on site are comparable in terms of mass, scale and height with existing adjacent or nearby structures.
 - c. The use of the site will not interfere with the use of adjacent properties since sufficient buffering between uses will be provided.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on the adjacent property or properties.

THIS SINGLE-FAMILY HOUSE PERMIT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
3. **Exterior Alterations.** No exterior alterations to the structure may be implemented unless and until this Single-family House Permit is released to the Building Division.
4. **Conformance with Plans.** Construction and development shall conform to approved Site Development plans entitled, "Guerrero Residence" dated July 1, 2003 (as revised in Condition No. 9) on file with the

Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04). Modification of the project plans prior to Final Inspection of the Building Permit shall require additional permits as deemed necessary by the Director of Planning. Following Final Inspection of the Building Permit, modification of the structure shall conform to the permit requirements of Section 20.44.1230 of the San José Municipal Code.

5. **Deadline for Commencing Construction.** This Single-family House Permit shall automatically expire two years from and after the date of issuance hereof by said Director if within such two-year period construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Single-family House Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to one year. The Permit Adjustment must be approved prior to the expiration of this Permit.
6. **Revocation.** This Single-family House is subject to revocation for violation of any of its provisions or conditions.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of permit. *Failure to do so will cause this permit to automatically expire regardless of any other expiration date contained in this permit.*
9. **Plan Revisions.** Within 60 days of the issuance of this permit and prior to recordation, the applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
 - a. Revise the site plan, elevations and floor plans to set the second floor back from the first floor a minimum of 5 feet adjacent to the interior side property line.
10. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and to the hours of 8:00 a.m. to 7:00 p.m. on Saturdays, Sundays and legal holidays, except that construction may occur at any hour within a totally enclosed building if such construction is not audible at the property line and does not result in a public or private nuisance.
11. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
12. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* The permit file numbers, SF03-006, shall be printed on all construction plans submitted to the Building Division.
13. **Protection of Storm Drains.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. The storm drain systems flows to the Bay.

14. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.